

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

ANTHONY SLOAN,	:	CASE NO. C-1-01-592
Plaintiff,	:	Judge Weber
vs.	:	Magistrate Hogan
CITY OF CINCINNATI, et al.,	:	MOTION TO DISMISS
Defendants.	:	

Now comes Defendants, Laurie Wobser and Ronald Hale, III, in their individual capacity, and request the Court to dismiss this action pursuant to Federal Rule of Civil Procedure 12(B)(5), for insufficient service of process. This Motion is supported by the accompanying Memorandum.

Respectfully submitted,

/s/ Stephen S. Lazarus

Stephen S. Lazarus

(Ohio Reg.

#0041368)

Special Counsel for Defendant Police Officers Ronald Hale
and Laurie Wobser
HARDIN, LEFTON, LAZARUS & MARKS, LLC
915 Cincinnati Club Building
30 Garfield Place
Cincinnati, OH 45202
(513) 721-7300

MEMORANDUM

Defendants Wobser and Hale were not served with the Complaint in their individual capacity in accordance with Rule 4(m) which provides:

Time Limit for Service.

If service of the summons and complaint is not made upon a defendant within 120 days after the filing of the complaint, the court, upon motion or on its own initiative after notice to the plaintiff, shall dismiss the action without prejudice as to that defendant or direct that service be effected within a specified time; provided that if the plaintiff shows good cause for the failure, the court shall extend the time for service for an appropriate period.

The Complaint in this matter was filed on September 4, 2001. (Docket No. 1) Thus, pursuant to Rule 4(m), service had to be perfected on or about January 2, 2002. Plaintiffs did not file a summons for Defendants Wobser and Hale until July 3, 2002. (Docket No. 14 and 16) Service was obtained July 2, 2002 well outside the 120 days set forth in Rule 4(m).

For the foregoing reasons, Defendants Wobser and Hale respectfully request the Court to dismiss the action against them in their individual capacity as there has been a failure of timely service of process.

Respectfully submitted,

/s/ Stephen S. Lazarus

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing pleading was electronically filed with the Clerk of the Court on May 14, 2004. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system.

Michael J. Harmon, Esq.
Room 214, City Hall
801 Plum Street
Cincinnati, Ohio 45202

Timothy A. Smith, Esq.
199 East Court Street
Suite 409
Cincinnati, Ohio 45202

/s/ Stephen S. Lazarus

Stephen S. Lazarus (Ohio Reg. #0041368)
Special Counsel for Defendant Police Officers Ronald
Hale and Laurie Wobser